

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRUCE ROBERT GEORGE,

Defendant-Appellant.

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UNPUBLISHED

August 21, 2007

No. 269465

Calhoun Circuit Court

LC No. 05-000783-FH

Before: Whitbeck, C.J., and Talbot and Zahra, JJ.

PER CURIAM.

Defendant Bruce Robert George appeals as of right his jury trial conviction for negligent homicide, MCL 750.324. Defendant was sentenced as an habitual offender, second offense, MCL 769.10, to 180 days in jail and five years' probation. We affirm.

Defendant first argues that there was insufficient evidence presented at trial to support his conviction for negligent homicide. We review challenges to the sufficiency of the evidence "de novo and in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt." *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). "Circumstantial evidence and reasonable inferences that arise from that evidence can constitute satisfactory proof of the elements of a crime." *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

To prove negligent homicide, the prosecution must show that (1) defendant was operating a motor vehicle, (2) defendant was operating the vehicle at an immoderate rate of speed or in a careless, reckless, or negligent manner, (3) defendant's negligence was a substantial cause of an accident resulting in injuries to the victim, and (4) those injuries caused the victim's death. MCL 750.324; *People v Tims*, 449 Mich 83, 95, 99, 103-104; 534 NW2d 675 (1995).

Defendant argues that the prosecutor failed to show that he was negligent. Defendant specifically points to the lack of evidence that he engaged in erratic driving before the accident, or that he was intoxicated on the day of the accident. However, at trial, four witnesses testified that they observed defendant's pickup truck travel across a double yellow line, travel into the lane designated for oncoming traffic, and strike the victim's blue van, killing the victim. There was no evidence that defendant lost control of his truck because of mechanical failure, and there was no evidence that defendant was blinded by the sun or otherwise distracted from driving by external events. The prosecutor presented evidence at trial that defendant was traveling at a rate

of speed between 60 and 63 miles an hour at the time of the accident, in an area where the posted speed limit was 55 miles an hour. Defendant's vehicle actually picked up speed immediately before the collision, and defendant never decelerated or attempted to avoid the collision. The negligent homicide statute does not require the prosecutor to prove intentional conduct, reckless driving, or gross negligence; the statute allows for prosecutions based on proof of mere ordinary negligence. MCL 750.324; *People v Clark*, 171 Mich App 656, 659; 431 NW2d 88 (1988). Ordinary negligence has been defined as the failure to take reasonable care under the circumstances. *People v Traughber*, 432 Mich 208, 217; 439 NW2d 231 (1989). On the record before us, a rational trier of fact could have found beyond a reasonable doubt that defendant was traveling at an "immoderate speed" or otherwise operated his vehicle in a negligent manner.

Next, defendant argues that the trial court abused its discretion in awarding the victim's wife \$8,493.09 restitution, for the cost of the victim's funeral, because the victim's family accepted \$50,000 for the settlement of "all claims" from defendant's insurer. A trial court's order of restitution is generally reviewed for an abuse of discretion. *In re McEvoy*, 267 Mich App 55, 59; 704 NW2d 78 (2005). A trial court's factual findings are reviewed for clear error. *People v Zahn*, 234 Mich App 438, 445; 594 NW2d 120 (1999). However, defendant failed to object to the restitution order at the time of sentencing, and therefore, this Court's review is for plain error affecting defendant's substantial rights. *Carines, supra* at 763.

A sentencing court is required to order a defendant convicted of a felony to make full restitution to every victim of the defendant's conduct. *People v Griffis*, 218 Mich App 95, 103; 553 NW2d 642 (1996); MCL 780.766 (2). MCL 780.766(4)(f) provides that, if a defendant's crime results in physical injury to the victim, the trial court is required to order the defendant to pay an amount equal to the cost of actual funeral and related services. However, the trial court "shall not order restitution to be paid to a victim or victim's estate if the victim or victim's estate has received or is to receive compensation for that loss." MCL 780.766(8). Further, "[a]ny amount paid to a victim or victim's estate under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim or the victim's estate in any federal or state civil proceeding and shall reduce the amount payable to a victim or a victim's estate by an award from the crime victim services commission made after an order of restitution under this section." MCL 780.766(9).

At the sentencing hearing, defendant requested that the trial court take the insurance settlement into account. The presentence investigation report (PSIR) indicated that the victim's family had not been compensated for the \$8,493.09 cost of the victim's funeral. Defendant did not present evidence at the sentencing hearing that contradicted or challenged the accuracy of the PSIR. Further, defendant did not formally object to the trial court's order of restitution. A PSIR is presumed to be accurate, and a trial court is entitled to rely on factual information therein unless the defendant effectively challenges it. *People v Grant*, 455 Mich 221, 233-234; 565 NW2d 389 (1997). "It is incumbent on the defendant to make a proper objection and request an evidentiary hearing. Absent such objection, the court is not required to order, sua sponte, an evidentiary proceeding to determine the proper amount of restitution due." *People v Gahan*, 456 Mich 264, 276 n 17; 571 NW2d 503 (1997). While defendant attaches a copy of the release signed by the victim's wife to his appellate brief, this evidence was not provided to the trial court before the sentencing hearing, and therefore cannot be considered on appeal. *People v Powell*, 235 Mich App 557, 561 n 4; 599 NW2d 499 (1999). Moreover, the trial court's order of

restitution was “subject to change” if it was demonstrated that restitution was made by way of another proceeding. This is a determination to be made on motion to the trial court. On the record before us, the trial court was allowed to rely upon the information in the PSIR, and it was not an abuse of discretion to award restitution.

Affirmed.

/s/ William C. Whitbeck

/s/ Michael J. Talbot

/s/ Brian K. Zahra